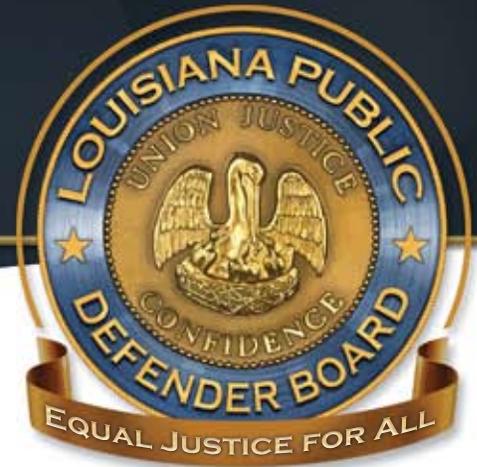


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Louisiana Public Defender Board Trial Court Performance Standards for Attorneys Representing Children in Delinquency Proceedings

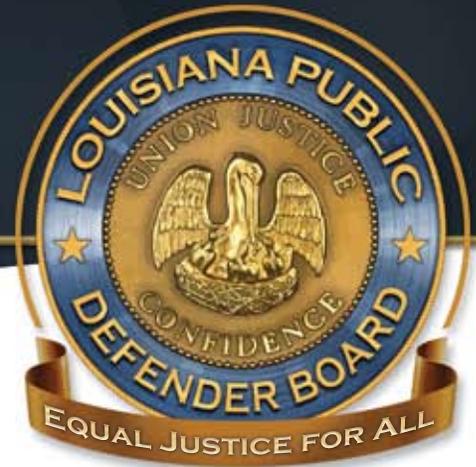
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Fall 2011

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Louisiana Public Defender Board Trial Court Performance Standards for Attorneys Representing Children in Delinquency Proceedings

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**Louisiana Public Defender Board
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“[N]either the Fourteenth Amendment nor the Bill of Rights is for adults alone. . . . [I]t would be extraordinary if our Constitution did not require the procedural regularity and the exercise of care [in the juvenile court process] implied in the phrase ‘due process’. Under our Constitution, the condition of being a boy does not justify a kangaroo court.”

— *Justice Abraham Fortas, United States Supreme Court*

Mission

In pursuit of equal justice, the Louisiana Public Defender Board advocates for clients, supports practitioners and protects the public by continually improving the services guaranteed by the constitutional right to counsel.

Through its commitment to performance standards, ethical excellence, data-driven practices and client-centered advocacy, the Louisiana Public Defender Board oversees the delivery of high quality legal services affecting adults, children and families, and supports community well-being across Louisiana.

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Trial Court Performance Standards For Attorneys Representing Children in Delinquency Proceedings

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Chapter 13. Trial Court Performance Standards for Attorneys Representing Children in Delinquency - Detention through Adjudication

§1301. Purpose

- A. The Standards for Attorneys Representing Children in Delinquency Proceedings are intended to serve several purposes. First and foremost, the Standards are intended to encourage district public defenders, assistant public defenders and appointed counsel to perform to a high standard of representation and to promote professionalism in the representation of children in delinquency proceedings.
- B. The Standards are also intended to alert defense counsel to courses of action that may be necessary, advisable, or appropriate, and thereby to assist attorneys in deciding upon the particular actions to be taken in each case to ensure that the client receives the best representation possible. The Standards are further intended to provide a measure by which the performance of district public defenders, assistant public defenders and appointed counsel may be evaluated, including guidelines for proper documentation of files to demonstrate adherence to the Standards, and to assist in training and supervising attorneys.
- C. The language of these Standards is general, implying flexibility of action that is appropriate to the situation. In those instances where a particular action is absolutely essential to providing quality representation, the Standards use the word “shall.” In those instances where a particular action is usually necessary to providing quality representation, the Standards use the word “should.” Even where the Standards use the word “shall,” in certain situations the lawyer’s best informed professional judgment and discretion may indicate otherwise.
- D. These Standards are not criteria for the judicial evaluation of alleged misconduct of defense counsel.

§1303. Obligations of Defense Counsel

- A. The primary and most fundamental obligation of the attorney representing a child in a delinquency case is to provide zealous and effective representation for his or her client at all stages of the process. The defense attorney’s duty and responsibility is to promote and protect the expressed interests of the child. Attorneys also have an obligation to uphold the ethical standards of the Louisiana Rules of Professional Conduct, to act in accordance with the Louisiana Rules of the Court, and to properly document case files to reflect adherence to these Standards.

- B. The attorney who provides legal services for a juvenile client owes the same duties of undivided loyalty, confidentiality and zealous representation to the child client as is due to an adult client. The attorney's personal opinion of the child's guilt is not relevant to the defense of the case.
- C. The attorney should communicate with the child in a manner that will be effective, considering the child's maturity, intellectual ability, language, educational level, special education needs, cultural background, gender, and physical, mental and emotional health. If appropriate, the attorney should file a motion to have a foreign language or sign language interpreter appointed by the court and present at the initial interview and at all stages of the proceedings.

§1305. Child's Expressed Preferences

- A. The attorney should represent the child's expressed preferences and follow the juvenile client's direction throughout the course of litigation. In addition, the attorney has a responsibility to counsel the child and advise the client as to potential outcomes of various courses of action. The attorney should refrain from the waiving of substantial rights or the substitution of his or her own view or the parents' wishes for the position of the juvenile client. The use of the word "parent" hereafter refers to the parent, guardian, custodial adult or person assuming legal responsibility for the juvenile.
- B. Considerations of personal and professional advantage or convenience should not influence counsel's advice or performance.

§1307. Scope of Representation

- A. Certain decisions relating to the conduct of the case are ultimately for the child and other decisions are ultimately for the attorney. The child, after full consultation with counsel, is ordinarily responsible for determining:
 - 1. the plea to be entered at adjudication;
 - 2. whether to accept a plea agreement;
 - 3. whether to participate in a diversionary program;
 - 4. whether to testify on his or her own behalf; and
 - 5. whether to appeal.
- B. The attorney should explain that final decisions concerning trial strategy, after full consultation with the child and after investigation of the applicable facts and law, are ultimately to be made by the attorney. The client should be made aware that the attorney is primarily responsible for deciding what motions to file, which witnesses to call, whether and how to conduct cross-examination, and what other evidence to present. Implicit in the exercise of the attorney's decision-making role in this regard is consideration of the child's input and full disclosure by the attorney to the client of the factors considered by the attorney in making the decisions.
- C. If a disagreement on significant matters of tactics or strategy arises between the lawyer and the child, the lawyer should make a record of the circumstances, his or her advice and reasons, and the conclusion reached. This record should be made in a manner that protects the confidentiality of the attorney-client relationship.

§1309. Basic Competency in Juvenile Proceedings

- A. Before agreeing to defend a juvenile client, an attorney has an obligation to make sure that he or she

has sufficient time, resources, knowledge and experience to offer quality representation to the child. Before an attorney defends a juvenile client, the attorney should observe juvenile court, including every stage of a delinquency proceeding, and have a working knowledge of juvenile law and practice.

- B. Prior to representing a juvenile client, at a minimum, the attorney should receive training or be knowledgeable in the following areas:
1. relevant federal and state statutes, court decisions and the Louisiana court rules, including but not limited to:
 - a. Louisiana Children’s Code and Code of Criminal Procedure;
 - b. Louisiana statutory chapters defining criminal offenses;
 - c. Louisiana Rules of Evidence;
 - d. Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq.*;
 - e. Family Education Rights Privacy Act (FERPA), 20 U.S.C. § 1232g;
 - f. Health Insurance Portability and Accountability Act of 1996 (HIPPA), P.L., 104-192 § 264, 42 U.S.C. § 1320d-2 (in relevant part);
 - g. Louisiana Administrative Code, Title 28, Part XLIII (Bulletin 1706 – Regulations for Implementation of the Children with Exceptionalities Act) and Part CI (Bulletin 1508 – Pupil Appraisal Handbook);
 - h. state laws concerning privilege and confidentiality, public benefits, education and disabilities; and
 - i. state laws and rules of professional responsibility or other relevant ethics standards.
 2. overview of the court process and key personnel in the delinquency process, including the practices of the specific judge before whom a case is pending;
 3. placement options for detention and disposition;
 4. trial and appellate advocacy;
 5. ethical obligations for juvenile representation including these guidelines for representation and the special role played in juvenile courts; and
 6. child development, including the needs and abilities of juveniles.
- C. An attorney representing juveniles shall annually complete six hours of training relevant to the representation of juveniles. Additional training may include, but is not limited to:
1. adolescent mental health diagnoses and treatment, including the use of psychotropic medications;
 2. how to read a psychological or psychiatric evaluation and how to use these in motions, including but not limited to those involving issues of consent and competency relating to Miranda warnings, searches and waivers;
 3. normal childhood development (including brain development), developmental delays and mental retardation;
 4. information on the multidisciplinary input required in child-related cases, including information on local experts who can provide consultation and testimony;
 5. information on educational rights, including special educational rights and services and how to access and interpret school records and how to use them in motions, including but not limited to those related to consent and competency issues;
 6. school suspension and expulsion procedures;
 7. skills for communicating with children;
 8. information gathering and investigative techniques;
 9. use and application of the current assessment tool(s) used in the applicable jurisdiction and possible challenges that can be used to protect juvenile clients;
 10. immigration issues regarding children;
 11. gang involvement and activity;

- 12. factors leading children to delinquent behavior, signs of abuse and/or neglect, and issues pertaining to status offenses; and
 - 13. information on religious background and racial and ethnic heritage, and sensitivity to issues of cultural and socio-economic diversity, sexual orientation, and gender identity.
- D. Individual lawyers who are new to juvenile representation should take the opportunity to practice under the guidance of a senior lawyer mentor. Correspondingly, experienced attorneys are encouraged to provide mentoring to new attorneys, assist new attorneys in preparing cases, debrief following court hearings, and answer questions as they arise.
 - E. If personal matters make it impossible for the defense counsel to fulfill the duty of zealous representation, he or she has a duty to refrain from representing the client. If it later appears that counsel is unable to offer effective representation in the case, counsel should move to withdraw.

§1311. Basic Obligations

- A. The attorney should obtain copies of all pleadings and relevant notices.
- B. The attorney should participate in all negotiations, discovery, pre-adjudication conferences, and hearings.
- C. The attorney should confer with the juvenile within 48 hours of being appointed and prior to every court appearance to counsel the child concerning the subject matter of the litigation, the client's rights, the court system, the proceedings, the lawyer's role, and what to expect in the legal process.
- D. Lawyers should promptly inform the child of his or her rights and pursue any investigatory or procedural steps necessary to protect the child's interests throughout the process.

§1313. Conflicts of Interest

- A. The attorney shall be alert to all potential and actual conflicts of interest that would impair his or her ability to represent a juvenile client. Loyalty and independent judgment are essential elements in the lawyer's relationship to a juvenile client. Conflicts of interest can arise from the lawyer's responsibilities to another client, a former client or a third person, or from the lawyer's own interests. Each potential conflict shall be evaluated with the particular facts and circumstances of the case and the juvenile client in mind. Where appropriate, attorneys may be obligated to contact the Office of Disciplinary Counsel to seek an advisory opinion on any potential conflicts.
- B. Joint representation of co-defendants is not a per se violation of the constitutional guarantee of effective assistance of counsel. However, if the attorney must forbear from doing something on behalf of a juvenile client because of responsibilities or obligations to another client, there is a conflict. Similarly, if by doing something for one client, another client is harmed, there is a conflict.
- C. The attorney's obligation is to the juvenile client. An attorney should not permit a parent or custodian to direct the representation. The attorney should not share information unless disclosure of such information has been approved by the child. With the child's permission, the attorney should maintain rapport with the child's parent or guardian, but should not allow that rapport to interfere with the attorney's duties to the child or the expressed interests of the child. Where there are conflicts of interests or opinions between the client and the client's parent or custodian, the attorney need not discuss the case with parents and shall not represent the views of a parent that are contrary to the client's wishes.

§1315. Client Communications

- A. The attorney shall keep the child informed of the developments in the case and the progress of preparing the defense and should promptly comply with all reasonable requests for information.
- B. Where the attorney is unable to communicate with the child or his or her guardian because of language differences, the attorney shall take whatever steps are necessary to ensure that he or she is able to communicate with the client and that the client is able to communicate his or her understanding of the proceedings. Such steps could include obtaining funds for an interpreter to assist with pre-adjudication preparation, interviews, and investigation, as well as in-court proceedings.

§1317. Client Confidentiality

- A. Juvenile defense counsel is bound by attorney-client confidentiality and privilege. The duty of confidentiality that the attorney owes the child is coextensive with the duty of confidentiality that attorneys owe their adult clients.
- B. The attorney should seek from the outset to establish a relationship of trust and confidence with the child. The attorney should explain that full disclosure to counsel of all facts known to the child is necessary for effective representation and, at the same time, explain that the attorney's obligation of confidentiality makes privileged the client's disclosures relating to the case.
- C. There is no exception to attorney-client confidentiality in juvenile cases for parents or guardians. Juvenile defense counsel has an affirmative obligation to safeguard a child's information or secrets from parents or guardians. Absent the child's informed consent, the attorney's interviews with the client shall take place outside the presence of the parents or guardians. Parents or guardians do not have any right to inspect juvenile defense counsel's file, notes, discovery, or any other case-related documents without the client's express consent. While it may often be a helpful or even necessary strategy to enlist the parents or guardians as allies in the case, juvenile defense counsel's primary obligation is to keep the child's secrets. Information relating to the representation of the child includes all information relating to the representation, whatever its source. Even if revealing the information might allow the client to receive sorely-needed services, defense counsel is bound to protect the child's confidences, unless the client gives the attorney explicit permission to reveal the information to get the particular services or disclosure is impliedly authorized to carry out the client's case objectives.
- D. In accordance with Louisiana Rule of Professional Conduct 1.6(b), a lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:
 - 1. to prevent reasonably certain death or substantial bodily harm;
 - 2. to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;
 - 3. to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;
 - 4. to secure legal advice about the lawyer's compliance with the Rules of Professional Conduct;
 - 5. to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client; or
 - 6. to comply with other law or a court order.
- E. To observe the attorney's ethical duty to safeguard the child's confidentiality, attorney-client interviews shall take place in a private environment. This limitation requires that, at the courthouse, juvenile defense counsel should arrange for access to private interview rooms, instead of discussing case

specifics with the child in the hallways; in detention facilities, juvenile defense counsel should have means to talk with the child out of the earshot of other inmates and guards; and in the courtroom, juvenile defense counsel should ask for a private space in which to consult with the child and speak with the child out of range of any microphones or recording devices.

- F. An attorney shall exercise discretion in revealing or discussing the contents of psychiatric, psychological, medical and social reports, tests or evaluations bearing on the juvenile client's history or condition. In general, the lawyer should not disclose data or conclusions contained in such reports to the extent that, in the lawyer's judgment based on knowledge of the child and the child's family, the revelation would be likely to affect adversely the client's well-being or relationships within the family and disclosure is not necessary to protect the client's interests in the proceeding.
- G. An attorney should ensure that communications with a client in an institution, including a detention center, are confidential. One way to ensure confidentiality is to stamp all mail as legal and confidential.
- H. In cases where delinquency proceedings are public, to protect the confidential and sometimes embarrassing information involved, the attorney, in consultation with the child, should move to close the proceedings or request the case to be called last on the docket when the courtroom is empty.
- I. The media may report on certain delinquency cases. If a decision is made to speak to the media, the attorney should be cautious due to confidentiality, other Rules of Professional Conduct, the potential for inaccurate reporting and strategic considerations. The attorney representing a child before the juvenile court should avoid personal publicity connected with the case, both during adjudication and thereafter.

§1319. Case File

- A. The attorney has the obligation to ensure that the case file is properly documented to demonstrate adherence to these Standards, such as, where relevant, documentation of intake and contact information, client and witness interviews, critical deadlines, motions, and any other relevant information regarding the case. The case file should also contain, where relevant, copies of all pleadings, orders, releases (school, medical, mental health, or other types), discovery, and correspondence associated with the case.

§1321. Continuity of Representation

- A. The attorney initially appointed should continue his or her representation through all stages of the proceedings. Unless otherwise ordered by the court, the attorney of record should continue to represent the child from the point of detention through disposition, post-disposition review hearings, and any other related proceedings, until the case is closed.

§1323. Stand-In Counsel

- A. Any attorney appointed to stand in for another at any delinquency proceeding shall:
 1. represent the child zealously as if the child is his or her own client;
 2. ensure that the child knows how to contact stand-in counsel in case the child does not hear from the attorney of record;
 3. immediately communicate with the attorney of record regarding upcoming dates/hearings, how to

contact the child, placement of the child, nature of charges, and other timely issues that the attorney of record may need to know or address; and

4. immediately or within a reasonable time thereafter provide to the child's attorney of record all notes, documents, and any discovery received.

§1325. Caseloads

- A. The attorney should not have such a large number of cases that he or she is unable to comply with these guidelines and the Rules of Professional Conduct. Before agreeing to act as the attorney or accepting appointment by a court, the attorney has an obligation to make sure that he or she has sufficient time, resources, knowledge, and experience to offer quality legal services in a particular matter. If, after accepting an appointment, it later appears that the attorney is unable to offer effective representation, the attorney should consider appropriate case law and ethical standards in deciding whether to move to withdraw or take other appropriate action.

§1327. Social Work and Probation Personnel

- A. Attorneys should cooperate with social workers and probation personnel and should instruct the client to do so, except to the extent such cooperation is or will likely become inconsistent with protection of the client's legitimate interests in the proceeding or of any other rights of the client under the law.

§1329. Detention

- A. For purposes of appointment of counsel, children are presumed to be indigent. The attorney shall meet with a detained child within 48 hours of notice of appointment or before the continued custody hearing, whichever is earlier, and shall take other prompt action necessary to provide quality representation, including:
 1. personally reviewing the well-being of the child and the conditions of the facility, and ascertaining the need for any medical or mental health treatment;
 2. ascertaining whether the child was arrested pursuant to a warrant or a timely determination of probable cause by a judicial officer;
 3. making a motion for the release of the child where no determination of probable cause has been made by a judicial officer within 48 hours of arrest; and
 4. invoking the protections of appropriate constitutional provisions, federal and state laws, statutory provisions, and court rules on behalf of the child, and revoking any waivers of these protections purportedly given by the child, as soon as practicable via a notice of appearance or other pleading filed with the State and court.
- B. Where the child is detained, the attorney shall:
 1. be familiar with the legal criteria for determining pre-adjudication release and conditions of release, and the procedures that will be followed in setting those conditions, including but not limited to the use and accuracy of any risk assessment instruments;
 2. be familiar with the different types of pre-adjudication release conditions the court may set and whether private or public agencies are available to act as a custodian for the child's release; and
 3. be familiar with any procedures available for reviewing the judge's setting of bail.
- C. The attorney shall attempt to secure the pre-adjudication release of the child under the conditions most

favorable and acceptable to the client unless contrary to the expressed wishes of the child.

- D. If the child is detained, the attorney should try to ensure, prior to any initial court hearing, that the child does not appear before the judge in inappropriate clothing, shackles or handcuffs.
- E. The attorney should determine whether a parent or other adult is able and willing to assume custody of the juvenile client. Every effort should be made to locate and contact such a responsible adult if none is present at the continued custody hearing.
- F. The attorney should arrange to have witnesses to support release. This may include a minister or spiritual advisor, teacher, relative, other mentor or other persons who are willing to provide guidance, supervision and positive activities for the youth during release.
- G. If the juvenile is released, the attorney should fully explain the conditions of release to the child and advise him or her of the potential consequences of a violation of those conditions. If special conditions of release have been imposed (e.g., random drug screening) or other orders restricting the client's conduct have been entered (e.g., a no contact order), the client should be advised of the legal consequences of failure to comply with such conditions.
- H. The attorney should know the detention facilities, community placements and other services available for placement.
- I. Where the child is detained and unable to obtain pre-adjudication release, the attorney should be aware of any special medical, mental health, education and security needs of the child and, in consultation with the child, request that the appropriate officials, including the court, take steps to meet those special needs.
- J. Following the continued custody hearing, the attorney should continue to advocate for release or expeditious placement of the child. If the child is not released, he or she should be advised of the right to have the placement decision reviewed or appealed.
- K. Whenever the child is held in some form of detention, the attorney should visit the child no less often than once a month and personally review his or her well-being, the conditions of the facility, and the opportunities to obtain release.
- L. Whenever the child is held in some form of detention, the attorney should be prepared for an expedited adjudicatory hearing.
- M. Where the child is not able to obtain release under the conditions set by the court, counsel should consider pursuing modification of the conditions of release under the procedures available.
- N. If the court sets conditions of release which require the posting of monetary bond or the posting of real property as collateral for release, counsel should make sure the child understands the available options and the procedures that must be followed in posting such assets. Where appropriate, counsel should advise the child and others acting in his or her behalf how to properly post such assets.
- O. The lawyer should not personally guarantee the attendance or behavior of the child or any other person, whether as surety on a bail bond or otherwise.

§1331. Initial Interview with Child

- A. The attorney should conduct a client interview as soon as practicable in order to obtain the information necessary to provide quality representation at the early stages of the case and to provide the child with information concerning the representation and the case proceedings. Establishing and maintaining a relationship with the child is the foundation of quality representation. Irrespective of the child's age, the attorney should consult with the child well before each court hearing. The attorney shall explain to the client how to contact the attorney and should promptly comply with child's requests for contact and assistance.
- B. A meeting or conversation conducted in a hallway or holding cell at the courthouse is not a substitute

for a thorough interview conducted in private and may waive confidentiality.

- C. Prior to conducting the initial interview, the attorney should, where possible:
1. be familiar with the elements of the offense(s) and the potential punishment(s), where the charges against the client are already known;
 2. obtain copies of any relevant documents that are available, including copies of any charging documents, recommendations and reports concerning pre-adjudication release, and law enforcement reports that might be available;
 3. request mental health, juvenile assessment center, detention center or educational records, including any screenings or assessments, that may help in the initial interview with the client;
- D. The purposes of the initial interview are to provide the child with information concerning the case and to acquire information from the child concerning the facts of the case.
1. To provide information to the client, the attorney should specifically:
 - a. explain the nature of the attorney-client relationship to the child, including the requirements of confidentiality;
 - b. explain the attorney-client privilege and instruct the child not to talk to anyone about the facts of the case without first consulting with the attorney;
 - c. ensure the child understands that he or she has the right to speak with his or her attorney;
 - d. explain the nature of the allegations, what the government must prove, and the likely and maximum potential consequences;
 - e. explain a general procedural overview of the progression of the case;
 - f. explain the role of each player in the system;
 - g. explain the consequences of non-compliance with court orders;
 - h. explain how and when to contact the attorney;
 - i. provide the names of any other persons who may be contacting the child on behalf of the attorney;
 - j. obtain a signed release authorizing the attorney and/or his or her agent to obtain official records related to the client, including medical and mental health records, school records, employment records, etc.;
 - k. discuss arrangements to address the child's most critical needs (e.g., medical or mental health attention, request for separation during detention, or contact with family or employers); and
 - l. assess whether the child is competent to proceed or has a disability that would impact a possible defense or mitigation.
 2. For a child who is detained, the attorney should also:
 - a. explain the procedures that will be followed in setting the conditions of pre-adjudication release;
 - b. explain the type of information that will be requested in any interview that may be conducted by a pre-adjudication release agency, explain that the child should not make statements concerning the offense, and explain that the right to not testify against oneself extends to all situations, including mental health evaluations; and
 - c. warn the child of the dangers with regard to the search of client's cell and personal belongings while in custody and the fact that telephone calls, mail, and visitations may be monitored by detention officials.
 3. The attorney or a representative of the attorney should collect information from the child including, but not limited to:
 - a. the facts surrounding the charges leading to the child's detention, to the extent the child knows and is willing to discuss these facts;
 - b. the child's version of the arrest, with or without a warrant; whether the child was searched and

if anything was seized, with or without warrant or consent; whether the child was interrogated and if so, whether a statement was given; the child's physical and mental status at the time any statement was given; whether any samples were provided, such as blood, tissue, hair, DNA, handwriting, etc., and whether any scientific tests were performed on the child's body or bodily fluids;

- c. the existence of any tangible evidence in the possession of the State (when appropriate, the attorney shall take steps to ensure that this evidence is preserved);
 - d. the names and custodial status of all co-defendants and the names of the attorneys for the co-defendants (if counsel has been appointed or retained);
 - e. the names and locating information of any witnesses to the crime and/or the arrest, regardless of whether these are witnesses for the prosecution or for the defense;
 - f. the child's current living arrangements, family relationships, and ties to the community, including the length of time his or her family has lived at the current and former addresses, as well as the child's supervision when at home;
 - g. any prior names or aliases used, employment record and history, and social security number;
 - h. the immigration status of the child and his or her family members, if applicable;
 - i. the child's educational history, including current grade level, attendance and any disciplinary history;
 - j. the child's physical and mental health, including any impairing conditions such as substance abuse or learning disabilities, and any prescribed medications and other immediate needs;
 - k. the child's delinquency history, if any, including arrests, detentions, diversions, adjudications, and failures to appear in court;
 - l. whether there are any other pending charges against the child and the identity of any other appointed or retained counsel;
 - m. whether the child is on probation (and the nature of the probation) or post-release supervision and, if so, the name of his or her probation officer or counselor and the child's past or present performance under supervision;
 - n. the options available to the child for release if the child is in secure custody;
 - o. the names of individuals or other sources that the attorney can contact to verify the information provided by the child and the permission of the child to contact those sources;
 - p. the ability of the child's family to meet any financial conditions of release (for clients in detention); and
 - q. where appropriate, evidence of the child's competence to participate in delinquency proceedings and/or mental state at the time of the offense, including releases from the client for any records for treatment or testing for mental health or mental retardation.
- E. Throughout the delinquency process, the attorney should take the time to:
1. keep the child informed of the nature and status of the proceedings on an ongoing basis;
 2. maintain regular contact with the child during the course of the case and especially before court hearings;
 3. review all discovery with the child as part of the case theory development;
 4. promptly respond to telephone calls and other types of contact from the child, where possible, within one business day or a reasonable time thereafter;
 5. counsel the child on options and related consequences and decisions to be made; and
 6. seek the lawful objectives of the child and not substitute the attorney's judgment for that of the child in those case decisions that are the responsibility of the child. Where an attorney believes that the child's desires are not in his or her best interest, the attorney should discuss the consequences of the child's position. If the child maintains his or her position, the attorney should defend the

child's expressed interests vigorously within the bounds of the law.

- F. In interviewing a child, it is proper for the lawyer to question the credibility of the child's statements or those of any other witness. The lawyer shall not, however, suggest expressly or by implication that the child or any other witness prepare or give, on oath or to the lawyer, a version of the facts which is in any respect untruthful, nor shall the lawyer intimate that the child should be less than candid in revealing material facts to the attorney.

§1333. Transfer to Adult Proceedings

- A. The attorney should be familiar with laws subjecting a child to the exclusive jurisdiction of a court exercising criminal jurisdiction, including the offenses subjecting the client to such jurisdiction. Counsel should seek to discover at the earliest opportunity whether transfer will be sought and, if so, the procedure and criteria according to which that determination will be made.
- B. Upon learning that transfer will be sought or may be elected, the attorney should fully explain the nature of the proceeding and the consequences of transfer to the child and the child's parents. In so doing, counsel may further advise the child concerning participation in diagnostic and treatment programs that may provide information material to the transfer decision.
- C. The attorney should be aware when an indictment may be filed directly in adult court by a district attorney and take actions to prevent such a filing including:
1. promptly investigating all circumstances of the case bearing on the appropriateness of filing the case in adult court and seeking disclosure of any reports or other evidence that the district attorney is using in his or her consideration of a direct filing;
 2. moving promptly for appointment of an investigator or expert witness to aid in the preparation of the defense when circumstances warrant; and
 3. where appropriate, moving promptly for the appointment of a competency or sanity commission prior to the transfer.
- D. Where a district attorney may transfer the case either through indictment filed directly in adult court or by a finding of probable cause at a continued custody hearing in juvenile court, the attorney should present all facts and mitigating evidence to the district attorney to keep the child in juvenile court.
- E. Where the district attorney makes a motion to conduct a hearing to consider whether to transfer the child, the attorney should prepare in the same way and with as much care as for an adjudication. The attorney should:
1. conduct an in-person interview with the child;
 2. identify, locate and interview exculpatory or mitigating witnesses;
 3. consider obtaining an expert witness to testify to the amenability of the child to rehabilitation; and
 4. present all facts and mitigating evidence to the court to keep the juvenile client in juvenile court.
- F. In preparing for a transfer hearing, the attorney should be familiar with all the procedural protections available to the child including but not limited to discovery, cross-examination, compelling witnesses.
- G. If the attorney who represented the child in the delinquency court will not represent the child in the adult proceeding, the delinquency attorney should ensure the new attorney has all the information acquired to help in the adult proceedings.
- H. If transfer for criminal prosecution is ordered, the lawyer should act promptly to preserve an appeal from that order and should be prepared to make any appropriate motions for post-transfer relief.

§1335. Mental Health Examinations

- A. Throughout a delinquency proceeding, either party may request or the judge may order a mental health examination of the child. Admissions made during such examinations may not be protected from disclosure. The attorney should ensure the child understands the consequences of admissions during such examinations and advise the client that personal information about the child or the child's family may be revealed to the court or other personnel.

§1337. Mental Incapacity to Proceed

- A. The attorney should be familiar with procedures for a determination of mental incapacity to proceed under the Louisiana Children's Code and other provisions of Louisiana law.
- B. Although the client's expressed interests ordinarily control, the attorney should question capacity to proceed without the child's approval or over the child's objection, if necessary.
- C. If, at any time, the child's behavior or mental ability indicates that he or she may be incompetent, the attorney should consider filing a motion for a competency commission.
- D. The attorney should prepare for and participate fully in the competency hearing.
- E. Prior to the evaluation by the commission, the attorney should request from the child and provide to the commission all relevant documents including but not limited to the arrest report, prior psychological/psychiatric evaluations, school records and any other important medical records.
- F. Where appropriate, the attorney should advise the client of the potential consequences of a finding of incompetence. Prior to any proceeding, the attorney should be familiar with all aspects of the evaluation and should seek additional expert advice where appropriate. If the competency commission's finding is that the child is competent, where appropriate, the attorney should consider calling an independent mental health expert to testify at the competency hearing.
- G. The attorney should be aware that the burden of proof is on the child to prove incompetency and that the standard of proof is a preponderance of the evidence.
- H. If the child is found incompetent, the attorney should participate, to the extent possible, in the development of the mental competency plan and in any subsequent meetings or hearings regarding the child's mental capacity.

§1339. Insanity

- A. The attorney should be familiar with the procedures for determination of sanity at the time of the offense and notice requirements under the Louisiana Children's Code and other provisions of Louisiana law when proceeding with an insanity defense.
- B. If the attorney believes that the child did not appreciate the consequences of his or her actions at the time of the offense, the attorney should consider filing for a sanity commission.
- C. The attorney should advise the child that if he or she is found not delinquent by reason of insanity, the court may involuntarily commit the child to the Department of Health and Hospitals for treatment. The attorney should be prepared to advocate on behalf of the child against involuntary commitment and provide other treatment options such as outpatient counseling or services.
- D. The attorney should be prepared to raise the issue of sanity during all phases of the proceedings, if the attorney's relationship with the child reveals that such a plea is appropriate.
- E. The attorney should be aware that the child has the burden of establishing the defense of insanity at the time of the offense by a preponderance of the evidence.

§1341. Manifestation of a Disability

- A. Where the child's actions that are the subject of the delinquency charge suggest a manifestation of a disability, the attorney should argue that the disability prevented the client from having the mental capacity or specific intent to commit the crime. Where appropriate, for school-based offenses, the attorney should argue that the school did not follow the child's Individual Education Program, which could have prevented the client's behavior. The attorney should seek a judgment of dismissal or a finding that the juvenile is not delinquent. This information may also be used for mitigation at the time of disposition following a plea or a finding of delinquency.

§1343. Ensure Official Recording of Court Proceedings

- A. The attorney should take all necessary steps to ensure a full official recording of all aspects of the court proceedings.

§1345. Investigation

- A. The child's attorney shall conduct a prompt and diligent independent case investigation. The child's admissions of responsibility or other statements to counsel do not necessarily obviate the need for investigation.
- B. The attorney should ensure that the charges and disposition are factually and legally correct and the child is aware of potential defenses to the charges.
- C. The attorney should examine all charging documents to determine the specific charges that have been brought against the child, including the arrest warrant, accusation and/or indictment documents, and copies of all charging documents in the case. The relevant statutes and precedents should be examined to identify the elements of the offense(s) with which the child is charged, both the ordinary and affirmative defenses that may be available, any lesser included offenses that may be available, and any defects in the charging documents, constitutional or otherwise, such as statute of limitations or double jeopardy.
- D. The attorney should seek investigators and experts, as needed, to assist the attorney in the preparation of a defense, in the understanding of the prosecution's case, or in the rebuttal of the prosecution's case.
- E. Where circumstances appear to warrant it, the lawyer should also investigate resources and services available in the community and, if appropriate, recommend them to the child and child's family.

§1347. Diversion/Alternatives

- A. The attorney should be familiar with diversionary programs and alternative solutions available in the community. Such programs may include diversion, mediation, or other alternatives that could result in a child's case being dismissed or handled informally. When appropriate and available, the attorney shall advocate for the use of informal mechanisms that could divert the client's case from the formal court process.

§1349. Continued Custody Hearing

- A. The attorney should take steps to see that the continued custody hearing is conducted in a timely fash-

ion unless there are strategic reasons for not doing so.

- B. In preparing for the continued custody hearing, the attorney should become familiar with:
1. the elements of each of the offenses alleged;
 2. the law for establishing probable cause;
 3. factual information that is available concerning probable cause;
 4. the subpoena process for obtaining compulsory attendance of witnesses at continued custody hearing and the necessary steps to be taken in order to obtain a proper recordation of the proceedings;
 5. the child's custodial situation, including all persons living in the home;
 6. alternative living arrangements for the client where the current custodial situation is an obstacle to release from detention; and
 7. potential conditions for release from detention and local options to fulfill those conditions, including the criteria for setting bail and options for the family to meet bail requirements.

§1351. Appearance to Answer

- A. The attorney should preserve the child's rights at the appearance to answer on the charges by requesting a speedy trial, preserving the right to file motions, demanding discovery, and entering a plea of denial in most circumstances, unless there is a sound tactical reason for not doing so or the child expresses an informed decision to resolve the matter quickly.
- B. Where appropriate, the attorney should arrange for the court to address any immediate needs of the child, such as educational/vocational needs, emotional/mental/physical health needs, and safety needs.

§1353. Child's Right to Speedy Trial

- A. The attorney should be aware of and protect the child's right to a speedy trial, unless strategic considerations warrant otherwise. Requests or agreements to continue a contested hearing date should not be made without consultation with the child. The attorney shall diligently work to complete the investigation and preparation in order to be fully prepared for all court proceedings. In the event an attorney finds it necessary to seek additional time to adequately prepare for a proceeding, the attorney should consult with the child and discuss seeking a continuance of the upcoming proceeding. Whenever possible, written motions for continuance made in advance of the proceeding are preferable to oral requests for continuance. All requests for a continuance should be supported by well-articulated reasons on the record in the event it becomes an appealable issue.

§1355. Discovery

- A. The attorney should pursue discovery, including filing a motion for discovery and conducting appropriate interviews. The attorney has a duty to pursue, as soon as practicable, discovery procedures provided by the rules of the jurisdiction and to pursue such informal discovery methods as may be available to supplement the factual investigation of the case.
- B. In considering discovery requests, the attorney should take into account that such requests may trigger reciprocal discovery obligations. The attorney shall be familiar with the rules regarding reciprocal discovery. The attorney shall be aware of any potential obligations and time limits regarding reciprocal discovery. Where the attorney intends to offer an alibi defense, he or she shall provide notice to the

district attorney as required by law.

- C. The attorney should consider seeking discovery, at a minimum, of the following items:
1. potential exculpatory information;
 2. potential mitigating information;
 3. the names and addresses of all prosecution witnesses, their prior statements, and criminal/delinquency records, if any;
 4. all oral and/or written statements by the child, and the details of the circumstances under which the statements were made;
 5. the prior delinquency record of the child and any evidence of other misconduct that the government may intend to use against the accused;
 6. all books, papers, documents, photographs, tangible objects, buildings or places, or copies, descriptions, or other representations, or portions thereof, relevant to the case;
 7. all results or reports of relevant physical or mental examinations, and of scientific tests or experiments, or copies thereof;
 8. statements of co-defendants;
 9. all investigative reports by all law enforcement and other agencies involved in the case; and
 10. all records of evidence collected and retained by law enforcement.
- D. The attorney shall monitor the dates to ensure the state complies with its discovery obligations. If discovery violations occur, the attorney should seek prompt compliance and/or sanctions for failure to comply.

§1357. Theory of the Case

- A. During the investigation and adjudication hearing preparation, the attorney should develop and continually reassess a theory of the case.

§1359. Motions

- A. The attorney should file motions, responses or objections as necessary to zealously represent the client. The attorney should consider filing an appropriate motion whenever there exists a good faith reason to believe that the child is entitled to relief that the court has discretion to grant. The attorney should file motions as soon as possible due to the time constraints of juvenile court.
- B. The decision to file motions should be made after considering the applicable law in light of the known circumstances of each case.
- C. Among the issues that counsel should consider addressing in a motion include, but are not limited to:
1. the pre-adjudication custody of the child;
 2. the constitutionality of the implicated statute or statutes;
 3. the potential defects in the charging process;
 4. the sufficiency of the charging document;
 5. the propriety and prejudice of any joinder of charges or defendants in the charging document;
 6. the discovery obligations of the state and the reciprocal discovery obligations of the defense;
 7. the suppression of evidence gathered as the result of violations of the Fourth, Fifth or Sixth Amendments to the United States Constitution, state constitutional provisions or statutes, including:
 - a. the fruits of illegal searches or seizures;
 - b. involuntary statements or confessions;
 - c. statements or confessions obtained in violation of the child's right to an attorney, or privilege

- against self-incrimination; or
 - d. unreliable identification evidence that would give rise to a substantial likelihood of irreparable misidentification.
 - 8. the suppression of evidence gathered in violation of any right, duty or privilege arising out of state or local law;
 - 9. in consultation with the child, a mental or physical examination of the child;
 - 10. relief due to mental incapacity, incompetency, mental retardation or mental illness;
 - 11. access to resources that or experts who may be denied to the child because of his or her indigence;
 - 12. the child's right to a speedy trial;
 - 13. the child's right to a continuance in order to adequately prepare his or her case;
 - 14. matters of evidence which may be appropriately litigated by means of a pre-adjudication motion in limine;
 - 15. motion for judgment of dismissal; or
 - 16. matters of adjudication or courtroom procedures, including inappropriate clothing or restraints of the client.
- D. The attorney should withdraw a motion or decide not to file a motion only after careful consideration, and only after determining whether the filing of a motion may be necessary to protect the child's rights, including later claims of waiver or procedural default. The attorney has a continuing duty to file motions as new issues arise or new evidence is discovered.

§1361. Plea Negotiations

- A. The attorney should explore with the child the possibility and desirability of reaching a negotiated disposition of the charges rather than proceeding to an adjudication, and in doing so, should fully explain the rights that would be waived by a decision to enter a plea and not to proceed to adjudication. After the attorney is fully informed on the facts and the law, he or she should, with complete candor, advise the child concerning all aspects of the case, including counsel's frank estimate of the probable outcome. Counsel should not understate or overstate the risks, hazards or prospects of the case in order unduly or improperly to influence the child's determination of his or her posture in the matter.
- B. The attorney shall not accept any plea agreement without the child's express authorization.
- C. The existence of ongoing tentative plea negotiations with the prosecution should not prevent the attorney from taking steps necessary to preserve a defense nor should the existence of ongoing plea negotiations prevent or delay the attorney's investigation into the facts of the case and preparation of the case for further proceedings, including adjudication.
- D. The attorney should participate in plea negotiations to seek the best result possible for the child consistent with the child's interests and directions to the attorney. The attorney should consider narrowing contested issues or reaching global resolution of multiple pending cases. Prior to entering into any negotiations, the attorney shall have sufficient knowledge of the strengths and weaknesses of the child's case, or of the issue under negotiation, enabling the attorney to advise the child of the risks and benefits of settlement.
- E. In conducting plea negotiations, the attorney should be familiar with:
 - 1. the various types of pleas that may be agreed to, including an admission, a plea of nolo contendere, and a plea in which the child is not required to personally acknowledge his or her guilt (Alford plea);
 - 2. the advantages and disadvantages of each available plea according to the circumstances of the case; and

3. whether the plea agreement is binding on the court and the Office of Juvenile Justice.
- F. In conducting plea negotiations, the attorney should attempt to become familiar with the practices and policies of the particular jurisdiction, judge and prosecuting authority, and probation department that may affect the content and likely results of negotiated pleas.
- G. In preparing to enter a plea before the court, the attorney should explain to the child the nature of the plea hearing and prepare the child for the role he or she will play in the hearing, including answering questions of the judge and providing a statement concerning the offense and the appropriate disposition. Specifically, the attorney should:
1. be satisfied there is a factual or strategic basis for the plea or admission or Alford plea;
 2. make certain that the child understands the rights he or she will waive by entering the plea and that the child's decision to waive those rights is knowing, voluntary and intelligent; and
 3. be satisfied that the plea is voluntary and that the child understands the nature of the charges;
- H. When the plea is against the advice of the attorney or without adequate time to investigate, the attorney should indicate this on the record.

§1363. Court Appearances

- A. The attorney shall attend all hearings.

§1365. Preparing the Child for Hearings

- A. The attorney should explain to the juvenile, in a developmentally appropriate manner, what is expected to happen before, during and after each hearing.
- B. The attorney should advise the client as to suitable courtroom dress and demeanor. If the client is detained, the attorney should consider requesting the client's appearance unshackled and unchained. The attorney should also be alert to the possible prejudicial effects of the client appearing before the court in jail or other inappropriate clothing.
- C. The attorney should plan with the client the most convenient system for conferring throughout the delinquency proceedings.

§1367. Adjudication Preparation

- A. Where appropriate, the attorney should have the following materials available at the time of trial:
1. copies of all relevant documents filed in the case;
 2. relevant documents prepared by investigators;
 3. outline or draft of opening statement;
 4. cross-examination plans for all possible prosecution witnesses;
 5. direct examination plans for all prospective defense witnesses;
 6. copies of defense subpoenas;
 7. prior statements of all prosecution witnesses (e.g., transcripts, police reports) and prepared transcripts of any audio or video taped witness statements;
 8. prior statements of all defense witnesses;
 9. reports from all experts;
 10. a list of all defense exhibits, and the witnesses through whom they will be introduced;
 11. originals and copies of all documentary exhibits;

12. copies of all relevant statutes and cases; and
 13. outline or draft of closing argument.
- B. The attorney should be fully informed as to the rules of evidence, court rules, and the law relating to all stages of the delinquency proceedings, and should be familiar with legal and evidentiary issues that can reasonably be anticipated to arise in the adjudication.
 - C. The attorney should decide if it is beneficial to secure an advance ruling on issues likely to arise at trial (e.g., use of prior adjudications to impeach the child) and, where appropriate, the attorney should prepare motions and memoranda for such advance rulings.
 - D. Throughout the adjudication process, the attorney should endeavor to establish a proper record for appellate review. The attorney shall be familiar with the substantive and procedural law regarding the preservation of legal error for appellate review, and should ensure that a sufficient record is made to preserve appropriate and potentially meritorious legal issues for such appellate review unless there are strategic reasons for not doing so.
 - E. Where necessary, the attorney should seek a court order to have the child available for conferences.
 - F. Throughout preparation and adjudication, the attorney should consider the potential effects that particular actions may have upon sentencing if there is a finding of delinquency.

§1369. Objections

- A. The attorney should make appropriate motions, including motions in limine and evidentiary and other objections, to advance the child's position at adjudication or during other hearings. The attorney should be aware of the burdens of proof, evidentiary principles and court procedures applying to the motion hearing. If necessary, the attorney should file briefs in support of evidentiary issues. Further, during all hearings, the attorney should preserve legal issues for appeal, as appropriate.
- B. Control of proceedings is principally the responsibility of the court, and the lawyer should comply promptly with all rules, orders, and decisions of the judge. Counsel has the right to make respectful requests for reconsideration of adverse rulings and has the duty to set forth on the record adverse rulings or judicial conduct that the attorney considers prejudicial to the child's legitimate interests.
- C. The attorney should be prepared to object to the introduction of any evidence damaging to the child's interests if counsel has any legitimate doubt concerning its admissibility under constitutional or local rules of evidence.

§1371. Sequestration of Witnesses

- A. Prior to delivering an opening statement, the attorney should ask for the rule of sequestration of witnesses to be invoked, unless a strategic reason exists for not doing so.

§1373. Opening Statements

- A. The attorney should be familiar with the law and the individual trial judge's rules regarding the permissibility and permissible content of an opening statement. The attorney should consider the strategic advantages and disadvantages of disclosure of particular information during the opening statement and of deferring the opening statement until the beginning of the defense case.

§1375. Confronting the Prosecutor's Case

- A. The attorney should attempt to anticipate weaknesses in the prosecution's proof and consider researching and preparing corresponding motions for judgment of dismissal. The attorney should systematically analyze all potential prosecution evidence, including physical evidence, for evidentiary problems.

§1377. Stipulations

- A. The attorney should consider the advantages and disadvantages of entering into stipulations concerning the prosecution's case.

§1379. Cross-Examination

- A. In preparing for cross-examination, the attorney should be familiar with the applicable law and procedures concerning cross-examinations and impeachment of witnesses. In order to develop material for impeachment or to discover documents subject to disclosure, the attorney should be prepared to question witnesses as to the existence of prior statements that they may have made or adopted.
- B. In preparing for cross-examination, the attorney should:
1. obtain the prior records of all state and defense witnesses;
 2. be prepared to examine any witness;
 3. consider the need to integrate cross-examination, the theory of the defense, and closing argument;
 4. consider whether cross-examination of each individual witness is likely to generate helpful information;
 5. anticipate those witnesses the prosecutor might call in its case-in-chief or in rebuttal;
 6. consider a cross-examination plan for each of the anticipated witnesses;
 7. be alert to inconsistencies in witnesses' testimony;
 8. be alert to possible variations in witnesses' testimony;
 9. review all prior statements of the witnesses and any prior relevant testimony of the prospective witnesses;
 10. where appropriate, review relevant statutes and local police policy and procedure manuals, disciplinary records and department regulations for possible use in cross-examining police witnesses;
 11. have prepared, for introduction into evidence, all documents that counsel intends to use during the cross-examination, including certified copies of records such as prior convictions of the witnesses or prior sworn testimony of the witnesses; and
 12. be alert to issues relating to witness credibility, including bias and motive for testifying.
- C. The lawyer should be prepared to examine fully any witness whose testimony is damaging to the child's interests.
- D. The lawyer's knowledge that a witness is telling the truth does not preclude cross-examination in all circumstances but may affect the method and scope of cross-examination.
- E. The attorney should consider conducting a voir dire examination of potential prosecution witnesses who may not be competent to give particular testimony, including expert witnesses whom the prosecutor may call. The attorney should be aware of the law of competency of witnesses, in general, and admission of expert testimony, in particular, in order to be able to raise appropriate objections.
- F. Before beginning cross-examination, the attorney should ascertain whether the prosecutor has provided copies of all prior statements of the witnesses as required by law. If the attorney does not receive prior statements of prosecution witnesses until they have completed direct examination, the attorney

should request adequate time to review these documents before commencing cross-examination.

§1381. Conclusion of Prosecution's Evidence

- A. Where appropriate, at the close of the prosecution's case, the attorney should move for a dismissal of petition on each count charged. The attorney should request, when necessary, that the court immediately rule on the motion, in order that the attorney may make an informed decision about whether to present a defense case.

§1383. Defense Strategy

- A. The attorney should develop, in consultation with the child, an overall defense strategy. In deciding on a defense strategy, the attorney should consider whether the child's legal interests are best served by not putting on a defense case, and instead relying on the prosecution's failure to meet its constitutional burden of proving each element beyond a reasonable doubt. In developing and presenting the defense case, the attorney should consider the implications it may have for a rebuttal by the prosecutor.

§1385. Affirmative Defenses

- A. The attorney should be aware of the elements and burdens of proof of any affirmative defense.

§1387. Direct Examination

- A. In preparing for presentation of a defense case, the attorney should, where appropriate:
 - 1. develop a plan for direct examination of each potential defense witness;
 - 2. determine the implications that the order of witnesses may have on the defense case;
 - 3. determine what facts necessary for the defense case can be elicited through the cross-examination of the prosecution's witnesses;
 - 4. consider the possible use of character witnesses, to the extent that use of character witnesses does not allow the prosecution to introduce potentially harmful evidence against the child;
 - 5. consider the need for expert witnesses and what evidence must be submitted to lay the foundation for the expert's testimony;
 - 6. review all documentary evidence that must be presented;
 - 7. review all tangible evidence that must be presented; and
 - 8. after the state's presentation of evidence and a discussion with the child, make the decision whether to call any witnesses.
- B. The attorney should conduct redirect examination as appropriate.
- C. The attorney should prepare all witnesses for direct and possible cross-examination. Where appropriate, the attorney should also advise witnesses of suitable courtroom dress and demeanor.

§1389. Child's Right to Testify

- A. The attorney shall respect the child's right to decide whether to testify.
- B. The attorney should discuss with the child all of the considerations relevant to the child's decision to

testify. This advice should include consideration of the child's need or desire to testify, any repercussions of testifying, the necessity of the child's direct testimony, the availability of other evidence or hearsay exceptions that may substitute for direct testimony by the child, and the child's developmental ability to provide direct testimony and withstand possible cross-examination.

- C. The attorney should be familiar with his or her ethical responsibilities that may be applicable if the child insists on testifying untruthfully. If the child indicates an intent to commit perjury, the attorney shall advise the child against taking the stand to testify falsely and, if necessary, take appropriate steps to avoid lending aid to perjury. If the child persists in a course of action involving the attorney's services that the attorney reasonably believes is criminal or fraudulent, the attorney should seek the leave of the court to withdraw from the case. If withdrawal from the case is not feasible or is not permitted by the court, or if the situation arises during adjudication without notice, the attorney shall not lend aid to perjury or use the perjured testimony. The attorney should maintain a record of the advice provided to the child and the child's decision concerning whether to testify.
- D. The attorney should protect the child's privilege against self-incrimination in juvenile court proceedings. When the child has elected not to testify, the lawyer should be alert to invoke the privilege and should insist on its recognition unless the client competently decides that invocation should not be continued.

§1391. Preparing the Child to Testify

- A. If the child decides to testify, the attorney should prepare the child to testify. This should include familiarizing the child with the courtroom, court procedures, and what to expect during direct and cross-examination. Often the decision whether to testify may change at trial. Thus, the attorney should prepare the case for either contingency.

§1393. Questioning the Child

- A. The attorney should seek to ensure that questions to the child are phrased in a developmentally appropriate manner. The attorney should object to any inappropriate questions by the court or an opposing attorney.

§1395. Closing Arguments

- A. The attorney should be familiar with the court rules, applicable statutes and law, and the individual judge's practice concerning time limits and objections during closing argument, and provisions for rebuttal argument by the prosecution. The attorney should consider the strategic advantages and disadvantages of a closing statement.

§1397. Motion for a New Trial

- A. The attorney should be familiar with the procedures available to request a new trial including the time period for filing such a motion, the effect it has upon the time to file a notice of appeal, and the grounds that can be raised.
- B. When a judgment of delinquency has been entered against the client after trial, the attorney should consider whether it is appropriate to file a motion for a new trial with the trial court. In deciding

whether to file such a motion, the factors the attorney should consider include:

1. the likelihood of success of the motion, given the nature of the error(s) that can be raised; and
2. the effect that such a motion might have upon the client's appellate rights, including whether the filing of such a motion is necessary to, or will assist in, preserving the child's right to raise on appeal the issues that might be raised in the new trial motion.

§1399. Expungement

- A. The attorney should inform the child of any procedures available for requesting that the record of conviction be expunged or sealed. The attorney should explain that some contents of juvenile court records may be made public (e.g., when a violent crime has been committed) and that there are limitations on the expungement of records.

Chapter 15. Trial Court Performance Standards For Attorneys Representing Children In Delinquency Proceedings - Post-Adjudication

§1501. Post-Adjudication Placement Pending Disposition

- A. Following the entry of an adjudication, the attorney should be prepared to argue for the least restrictive environment for the child pending disposition.

§1503. Defense's Active Participation in Designing the Disposition

- A. The active participation of the child's attorney at disposition is essential. In many cases, the attorney's most valuable service to the child will be rendered at this stage of the proceeding. Counsel should have the disposition hearing held on a subsequent date after the adjudication, unless there is a strategic reason for waiving the delay between adjudication and disposition.
- B. Prior to disposition there may be non-court meetings and staffings that can affect the juvenile's placement or liberty interest. The attorney should attend or participate in these, where possible.
- C. The attorney should not make or agree to a specific dispositional recommendation without the child's consent.

§1505. Obligations of Counsel Regarding Disposition

- A. The child's attorney should prepare for a disposition hearing as the attorney would for any other evidentiary hearing, including the consideration of calling appropriate witnesses and the preparation of evidence in mitigation of or support of the recommended disposition. Among the attorney's obligations regarding the disposition hearing are:

1. to ensure all information presented to the court which may harm the child and which is not accurate and truthful or is otherwise improper is stricken from the text of the predisposition investigation report;
 2. to develop a plan which seeks to achieve the least restrictive and burdensome sentencing alternative that is most acceptable to the child, and which can reasonably be obtained based on the facts and circumstances of the offense, the child's background, the applicable sentencing provisions, and other information pertinent to the disposition;
 3. to ensure all reasonably available mitigating and favorable information, which is likely to benefit the child, is presented to the court;
 4. to consider preparing a letter or memorandum to the judge or juvenile probation officer that highlights the child's strengths and the appropriateness of the disposition plan proposed by the defense; and
 5. where a defendant chooses not to proceed to disposition, to ensure that a plea agreement is negotiated with consideration of the disposition hearing, correctional, financial and collateral implications;
- B. The attorney should be familiar with disposition provisions and options applicable to the case, including but not limited to:
1. any disposition assessment tools;
 2. detention including any mandatory minimum requirements;
 3. deferred disposition and diversionary programs;
 4. probation or suspension of disposition and permissible conditions of probation;
 5. credit for pre-adjudication detention;
 6. restitution;
 7. commitment to the Office of Juvenile Justice at a residential or non-residential program;
 8. place of confinement and level of security and classification criteria used by Office of Juvenile Justice;
 9. eligibility for correctional and educational programs; and
 10. availability of drug rehabilitation programs, psychiatric treatment, health care, and other treatment programs.
- C. The attorney should be familiar with the direct and collateral consequences of adjudication and the disposition, including:
1. the impact of a fine or restitution and any resulting civil liability;
 2. possible revocation of probation or parole if client is serving a prior sentence on a parole status;
 3. future enhancement on dispositions;
 4. loss of participation in extra-curricular activities;
 5. loss of college scholarships;
 6. suspension or expulsion from school;
 7. the inability to be employed in certain occupations including the military;
 8. suspension of a motor vehicle operator's permit or license;
 9. ineligibility for various government programs (e.g., student loans) or the loss of public housing or other benefits;
 10. the requirement to register as a sex offender;
 11. the requirement to submit a DNA sample;
 12. deportation/removal and other immigration consequences;
 13. the loss of other rights (e.g., loss of the right to vote, to carry a firearm or to hold public office);
 14. the availability of juvenile arrest or court records to the public, in certain cases; or
 15. the transmission of juvenile arrest records, court records, or identifying information to federal law

enforcement agencies.

- D. The attorney should be familiar with disposition hearing procedures, including:
1. the effect that plea negotiations may have upon the disposition discretion of the court and/or the Office of Juvenile Justice;
 2. the availability of an evidentiary hearing and the applicable rules of evidence and burdens of proof at such a hearing;
 3. the use of “victim impact” evidence at any disposition hearing;
 4. the right of the child to speak prior to receiving the disposition;
 5. any discovery rules and reciprocal discovery rules that apply to disposition hearings; and
 6. the use of any sentencing guidelines.

§1507. Preparing the Child for the Disposition Hearing

- A. In preparing for the disposition hearing, counsel should consider the need to:
1. explain to the child the nature of the disposition hearing, the issues involved, the applicable sentencing requirements, disposition options and alternatives available to the court, and the likely and possible consequences of the disposition alternatives;
 2. explain fully and candidly to the child the nature, obligations, and consequences of any proposed dispositional plan, including the meaning of conditions of probation or conditional release, the characteristics of any institution to which commitment is possible, and the probable duration of the child’s responsibilities under the proposed dispositional plan;
 3. obtain from the child relevant information concerning such subjects as his or her background and personal history, prior criminal or delinquency record, employment history and skills, education, and medical history and condition, and obtain from the child sources through which the information provided can be corroborated;
 4. prepare the child to be interviewed by the official preparing the predisposition report, including informing the child of the effects that admissions and other statements may have upon an appeal, retrial or other judicial proceedings, such as forfeiture or restitution proceedings;
 5. inform the client of his or her right to speak at the disposition hearing and assist the client in preparing the statement, if any, to be made to the court, considering the possible consequences that any admission to committing delinquent acts may have upon an appeal, subsequent retrial or trial on other offenses;
 6. when psychological or psychiatric evaluations are ordered by the court or arranged by the attorney prior to disposition, the attorney should explain the nature of the procedure to the child and the potential lack of confidentiality of disclosures to the evaluator;
 7. ensure the child has adequate time to examine the predisposition report, if one is utilized by the court; and
 8. maintain regular contact with the child prior to the disposition hearing and inform the client of the steps being taken in preparation for disposition.

§1509. Predisposition Report

- A. Where the court uses a predisposition report, counsel should be familiar with the procedures concerning the preparation, submission, and verification of the predisposition report. Counsel should be prepared to use the predisposition report in defense of the child.
- B. Counsel should be familiar with the practices of the officials who prepare the predisposition report and

the defendant's rights in that process, including access to the predisposition report by the attorney and the child, and ability to waive such a report, if it is in the child's interest to do so.

- C. Counsel should provide to the official preparing the report relevant information favorable to the client, including, where appropriate, the child's version of the alleged act. Counsel should also take appropriate steps to ensure that erroneous or misleading information which may harm the child is deleted from the report and to preserve and protect the child's interests, including requesting that a new report be prepared with the challenged or unproven information deleted before the report or memorandum is distributed to the Office of Juvenile Justice or treatment officials.
- D. In preparation for a disposition hearing, the attorney should ensure receipt of the disposition report no later than 72 hours prior to the disposition hearing. Upon receipt of this report, the attorney should review the report with the client, ensure its accuracy and prepare a response to the report.

§1511. Prosecution's Disposition Position

- A. The attorney should attempt to determine, unless there is a sound tactical reason for not doing so, whether the prosecution will advocate that a particular type or length of disposition be imposed and attempt to persuade the district attorney to support the child's requested disposition.

§1513. Disposition Hearing

- A. The attorney should be prepared at the disposition hearing to take the steps necessary to advocate fully for the requested disposition and to protect the child's interest.
- B. Where the dispositional hearing is not separate from adjudication or where the court does not have before it all evidence required by statute, rules of court or the circumstances of the case, the lawyer should seek a continuance until such evidence can be presented if to do so would serve the child's interests.
- C. The lawyer at disposition should examine fully and, where possible, impeach any witness whose evidence is damaging to the child's interests and to challenge the accuracy, credibility, and weight of any reports, written statements, or other evidence before the court. The lawyer should not knowingly limit or forego examination or contradiction by proof of any witness, including a social worker or probation department officer, when failure to examine fully will prejudice the child's interests. Counsel should seek to compel the presence of witnesses whose statements of fact or opinion are before the court or the production of other evidence on which conclusions of fact presented at disposition are based.
- D. Where information favorable to the child will be disputed or challenged, the attorney should be prepared to present supporting evidence, including testimony of witnesses, to establish the facts favorable to the child.
- E. Where the court has the authority to do so, counsel should request specific recommendations from the court concerning the place of detention, probation or suspension of part or all of the sentence, psychiatric treatment or drug rehabilitation.
- F. During the hearing if the court is indicating a commitment is likely, the attorney should attempt to ensure that the child is placed in the most appropriate, least restrictive placement available.

§1515. Post-Disposition Counseling

- A. When a disposition order has been entered, it is the attorney's duty to explain the nature, obligations

and consequences of the disposition to the child and to urge upon the child the need for accepting and cooperating with the dispositional order. The child should also understand the consequences of a violation of the order.

- B. Where the court places the child in the custody of the Office of Juvenile Justice, with the child's permission and a parent's written release, the attorney should provide the Office of Juvenile Justice with a copy of the child's education records.
- C. If appeal from either the adjudicative or dispositional decree is contemplated, the child should be advised of that possibility, but the attorney shall counsel compliance with the court's decision during the interim.

§1517. Reviewing or Drafting Court Orders

- A. Counsel's attorney should review all written orders or when necessary draft orders to ensure that the child's interests are protected, to ensure the orders are clear and specific, and to ensure the order accurately reflects the court's oral pronouncement and complies with the applicable law.

§1519. Monitoring the Child's Post-Disposition Detention

- A. The attorney should monitor the child's post-disposition detention status and ensure that the child is placed in a commitment program in a timely manner as provided by law.
- B. When a child is committed to a program, the attorney shall provide the child information on how to contact the attorney to discuss concerns.

§1521. Post-Disposition Representation

- A. The lawyer's responsibility to the child does not end with the entry of a final dispositional order. Louisiana law entitles juveniles to representation at every stage of the proceeding, including post-disposition matters. The attorney should be prepared to counsel and render or assist in securing appropriate legal services for the child in matters arising from the original proceeding.
- B. The lawyer engaged in post-dispositional representation should conduct those proceedings according to the principles generally governing representation in juvenile court matters. The attorney should be prepared to actively participate in hearings regarding probation status. When a child is committed to a program and the attorney receives notice of an Office of Juvenile Justice transfer staffing or decision, the attorney should review and challenge the decision and, if appropriate, bring the matter to the trial court.
- C. Where the lawyer is aware that the child or the child's family needs and desires community or other medical, psychiatric, psychological, social or legal services, he or she may render assistance in arranging for such services.
- D. The lawyer should contact both the child and the agency or institution involved in the disposition plan at regular intervals in order to ensure that the child's rights are respected and, where necessary, to counsel the child and the child's family concerning the dispositional plan.
- E. Even after an attorney's representation in a case is complete, the attorney should comply with a child's reasonable requests for information and materials.

§1523. Child's Right to Appeal

- A. Following a delinquency adjudication, the attorney should inform the child of his or her right to appeal the judgment of the court and the action that must be taken to perfect an appeal. This discussion should include the details of the appellate process including the time frames of decisions, the child's obligations pending appeal, and the possibility of success on appeal.
- B. Counsel representing the child following a delinquency adjudication should promptly undertake any factual or legal investigation in order to determine whether grounds exist for relief from juvenile court or administrative action. If there is reasonable prospect of a favorable result, the lawyer should advise the child of the nature, consequences, probable outcome, and advantages or disadvantages associated with such proceedings.
- C. After disposition, the attorney should consider filing a motion to reconsider the disposition. The attorney should consider an appeal of the disposition where appropriate.

§1525. Counsel's Participation in Appeal

- A. A lawyer who has represented a client through adjudication shall be prepared to continue representation in appellate actions, whether affirmative or defensive, unless new counsel is appointed at the request of the client or, in the case of a felony-grade delinquency matter, the trial attorney appropriately utilizes the services of the Louisiana Appellate Project, to the extent those appellate services are available.
- B. Whether or not trial counsel expects to conduct the appeal, he or she shall promptly inform the child of the right to appeal and take all steps necessary to protect that right until appellate counsel is substituted or the child decides not to exercise this privilege.
- C. If after such consultation and if the child wishes to appeal the order, the lawyer should take all steps necessary to perfect the appeal and seek appropriate temporary orders or extraordinary writs necessary to protect the interests of the client during the pendency of the appeal.
- D. In circumstances where the child wants to file an appeal, the attorney should file the notice in accordance with the rules of the court and take such other steps as are necessary to preserve the defendant's right to appeal, such as ordering transcripts of the trial proceedings.
- E. Where the child indicates a desire to appeal the judgment and/or disposition of the court, counsel should consider requesting a stay of execution of any disposition, particularly one involving out-of-home placement or secure care. If the stay is denied, the attorney should consider appealing the stay. The attorney should also inform the child of any right that may exist to be released on bail pending the disposition of the appeal. Where an appeal is taken and the child requests bail pending appeal, trial counsel should cooperate with appellate counsel in providing information to pursue the request for bail.
- F. Where the child takes an appeal, trial counsel should cooperate in providing information to appellate counsel (where new counsel is handling the appeal) concerning the proceedings in the trial court.
- G. Where there exists an adequate pool of competent counsel available for assignment to appeals from juvenile court orders and substitution will not work substantial disadvantage to the child's interests, new counsel may be appointed in place of trial counsel.
- H. When the appellate decision is received, the attorney or substitute appellate counsel should explain the outcome of the case to the client.

§1527. Probation Revocation Representation

- A. Trial counsel should be prepared to continue representation if revocation of the child's probation or parole is sought, unless new counsel is appointed.
- B. The attorney appointed to represent the child charged with a violation of probation should prepare in the same way and with as much care as for an adjudication. The attorney should:
 - 1. conduct an in-person interview with the child;
 - 2. review the probation department file;
 - 3. identify, locate and interview exculpatory or mitigating witnesses;
 - 4. consider reviewing the child's participation in mandated programs; and
 - 5. consider obtaining expert assistance to test the validity of relevant scientific evidence (e.g., urinalysis results).
- C. In preparing for a probation revocation, the attorney should be familiar with all the procedural protections available to the child including but not limited to discovery, cross-examination, compelling witnesses and timely filing of violations.
- D. When representing a child in a revocation of probation hearing who was not a client of the attorney at the initial adjudication, the attorney should find out if the child was represented by an attorney in the underlying offense for which the child was placed on probation. The attorney may have an argument if the child entered an admission without counsel and did not give a valid waiver of counsel.
- E. The attorney should prepare the child for the probation revocation hearing including the possibility of the child or parent being called as witnesses by the State. The attorney should also prepare the child for all possible consequences of a decision to enter a plea or the consequences of a probation revocation.
- F. In preparing for the probation revocation, the attorney should prepare alternative dispositions including the possibility of negotiated alternatives such as a pre-hearing contempt proceeding or an additional disposition short of revocation.

§1529. Challenges to the Effectiveness of Counsel

- A. Where a lawyer appointed or retained to represent a child previously represented by other counsel has a good faith belief that prior counsel did not provide effective assistance, the child should be so advised and any appropriate relief for the child on that ground should be pursued.

The Louisiana Public Defender Board Trial Court Performance Standards were promulgated in accordance with La. R.S. 15:148.

The Louisiana Public Defender Board Trial Court Performance Standards were promulgated in the Louisiana Register 37:2599 (September 2011).

Through its performance standards and commitment to data-driven policies, the Louisiana Public Defender Board will be accountable to the policy makers who supported the vision of fair public defense for all, to the tax payers who fund our programs, to the defenders who keep the system running, to the clients who depend on us to protect and defend their rights, and to the Louisiana community, who will be safer and stronger because we exist.

The Louisiana State Constitution guarantees that “[a]t each stage of the proceedings, every person is entitled to assistance of counsel of his choice, or appointed by the court if he is indigent and charged with an offense punishable by imprisonment. The legislature shall provide for a uniform system for securing and compensating qualified counsel for indigents.”

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